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ABSTRACT

Asserting that immigration reform and related issues have commanded sustained attention in the opening weeks of the 99th Congress, this paper provides an overview of important developments in this area, and highlights steps taken by the National Council of La Raza to help shape these developments. The developments discussed include: (1) The Immigration and Naturalization Service's (INS) initiation of the Cuban Adjustmant Program (La Raza, working as one member of an ad hoc task force, is meeting with the INS to clarify review procedures and guarantee protection of constitutional due process); (2) proposed legislation to temporarily suspend the deportation of Salvadorean immigrants pending a detailed study of their situation; and (3) the introduction of two immigration reform proposals, both with provisions that would affect hiring practices, eligibility requirements for permanent resident status, and other immigration problems. Other possible immigration proposals are also looked at. Finally, La Raza's participation in a coalition on immigration reform legislation is described. It is held that current conditions disadvantage hundreds of thousands of Hispanics nationwide; La Raza is working with other organizations to forge effective, nondiscriminatory legislation. The organization's conviction that excludable aliens are entitled to full legal protection is defended, and its opposition to Jean v. Nelson is asserted. A fact sheet on the Cuban deportations is also included, as background material on the process by which Cubans who arrived in the 1980 Mariel Boatlift are to be deported. (KH)

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NATIONAL COUNCIL OF LA RAZA

PERSPECTIVAS PUBLICAS

ISSUE UPDATE:

IMMIGRATION REFORM AND RELATED ISSUES

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NATIONAL COUNCIL OF
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ADVOCACY AND LEGISLATION

Perspectivas
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Title: ISSUE UPDATE: IMMIGRATION REFORM AND RELATED ISSUES (Feb. 27, 1985)

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I. OVERVIEW

As expected, immigration reform and related issues have commanded sustained attention in the opening weeks of the 99th Congress. Several issues, ranging from immigration legislation to the U.S. "sanctuary movement" providing safe haven to Central American refugees, have received widespread press coverage, and new developments occur daily. This Issue Update explains these developments.

II. CUBAN ADJUSTMENT PROGRAM

In December 1984, the Immigration and Naturalization Service (INS) initiated a two-step process to adjust the status of Cuban Entrants -- Cubans who were part of the 1980 "Mariel Boatlift" -- under the Cuban Adjustment Act of 1966. The program involves:

- A 60-day registration period, from December 3, 1984, to January 31, 1985, during which all eligible Cubans were to register their names and addresses with the INS through local, participating Voluntary Agencies (Volags).
- Beginning in April 1985, INS District Offices' review of all eligible Cubans' applications. Those persons who did not register will not be penalized; however, their cases will be reviewed after those of registrants.

At about the same time that the adjustment process was announced, the U.S. State Department completed negotiations for an agreement with the Cuban government, which normalized previously suspended migration between the two countries and provided for the "repatriation" of over 2,700 persons, primarily criminals and institutionalized mentally ill people, to Cuba. Concerns over a perceived relationship between the registration process outlined above and a list of the 2,746 Cubans to be deported under the State Department agreement chilled participation in the registration program. Of the approximately 125,000 Cuban Entrants, less than half have come forward to register for adjustment.

Concerns within the affected community have deepened during the past several weeks, as questions about how the INS will select those Cuban Entrants to be deported have remained unanswered. It is widely acknowledged that, during the brief period of massive arrival of Cubans and Haitians in 1980, many people were shuffled from beaches to processing centers in a haphazard fashion. Sheer numbers precluded

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fair processing of all refugees; hundreds of detained Cubans and Haitians still remain in limbo status. As the application and review process for Cubans approaches, and INS procedures remain unclear, the question of fair review in these cases becomes acutely important.

Many observers note that the process by which Cuban Entrants' status will be adjusted roughly parallels various legalization programs proposed as part of immigration reform legislation. Issues of jeopardy and the INS' potential neglect of individuals' rights to adequate review of applications, as well as the overall question of how best to ensure maximum participation by the targeted population, make the current adjustment a critical "dry run" for legalization.

The National Council of La Raza, working within an ad hoc task force of Hispanic, religious, civil liberties, and refugee resettlement groups formed to address these concerns, has met with representatives of the INS in an effort to clarify review procedures and guarantee protection of constitutional due process rights (see attached Fact Sheet, prepared by the coalition). In light of the deportation on February 21 of 23 Cuban Entrants under conditions of the U.S.-Cuba agreement, these efforts are crucial, and will continue until this "jeopardy" issue has been satisfactorily addressed.

III. SUSPENSION OF DEPORTATION FOR SALVADOREANS

Congressman Joe Moakley (D-MA) and Senator Dennis DeConcini (D-AZ) have introduced legislation (H.R. 822, S. 377) providing for the temporary suspension of deportation of Salvadorean immigrants pending a detailed study of their situation. Hundreds of thousands of Salvadoreans have been displaced by widespread violence in that country's fierce civil war; some 300,000-500,000 now live in the U.S. In recent weeks, much media attention has focused on the arrest and 71-count indictment of a group of church leaders in the U.S. "sanctuary movement," which provides safe haven for Salvadoreans and other Central American refugees. Central to the controversy raised by these arrests are the questions of whether the U.S. is obligated, under current international treaties and the Refugee Act of 1980, to provide refuge to Salvadoreans, and whether it should halt the current policy of deporting displaced nationals from that country, until reports of abuse of deportees upon their forced return to El Salvador have been fully investigated.

Background on this important human rights dilemma is provided in the attached La Raza Fact Sheet.

IV. IMMIGRATION REFORM LEGISLATION

A. Legislative Developments

In the aftermath of last fall's House-Senate Conference deadlock on the Simpson-Mazzoli bill, several members of Congress expressed their intent to push forward in the 99th Congress with modified approaches to immigration reform. To date, there has been much speculation about various immigration proposals, and some legislation has already been introduced. The situation, however, remains fluid;

Congress and the Administration's preoccupation with broad budget issues makes it very difficult to predict what will happen regarding immigration-related proposals, and when. Still, several clear developments can be identified.

To date, two immigration reform proposals have been introduced. Congressman Edward Roybal (D-CA) introduced legislation in early January (H.R. 39), and, in early February, Representative Dan Lungren (R-CA) introduced the Comprehensive Immigration Reform and Control Act of 1985 (H.R. 1061). The following are major provisions of the two bills. Congressman Roybal's bill would:

- Prohibit "knowing" hiring of undocumented aliens, and set a gradual scale of fines and penalties for employers who engage in a "pattern and practice" of violations. Recordkeeping/verification would be required only for those employers guilty of repeated violations.

- Authorize increased funding to enhance both enforcement of labor laws and INS activities.

- Allow a private right of action against employers by workers alleging "unfair employment practices" -- either the displacement of citizens and legal residents by undocumented workers or discrimination related to national origin or citizenship status.

- Provide a one-tier legalization program, wherein all eligible persons who have been in the U.S. since January 1, 1982, would be granted permanent resident status. Those persons who are ineligible due to low income levels or lack of English language and civics skills could opt for a trial temporary residence, with the possibility of adjustment to permanent residence after two years.

- Establish a three-year agricultural labor transition program, in which employers could re-hire a decreasing proportion of the original undocumented workforce while sanctions provisions were implemented. The bill would make no changes in current temporary worker programs (so-called "H-2"), but would provide for a study of the system.

Congressman Lungren's bill closely follows the provisions agreed to by the House-Senate Conference Committee last fall. The bill would:

- Make it unlawful to "knowingly hire, recruit or refer any alien not authorized to work in the United States," set record-keeping/verification requirements for employers of more than three workers, and provide for a Presidential study of the effectiveness of the verification system. The bill would also set both civil and criminal penalties (of up to $3000. and/or one year's imprisonment) for violators.

- Provide a two-tiered legalization program, in which eligible persons in the U.S. prior to January 1, 1977, would be granted permanent resident status, and those in the U.S. prior to January 1,

1980, would be granted temporary residence. (Cuban/Haitian Entrants who entered prior to January 1, 1981, would also receive temporary resident status.)

- Limit judicial review of political asylum cases, and provide for summary exclusion of immigrants entering the U.S. without documents.

- Streamline the present "H-2" temporary worker system, provide for a three-year transition program for agricultural employers, and establish a separate guestworker program for the production of "perishable crops."

Most observers close to the immigration debate note that both bills appear to be "trial balloons" designed to test political attitudes. So far, neither bill has received substantial attention within Congress, and there has been little news coverage of either proposal.

While no other comprehensive reform legislation has been introduced, reports throughout the past several weeks suggest that other, related efforts are in progress. Senator Alan Simpson (R-WY), chairman of the Senate Subcommittee on Immigration and Refugee Policy, has indicated that he plans to hold hearings on the issues of alienage and costs, which he has blamed for the failure of the Simpson-Mazzoli bill last year. Most observers expect him to then introduce one of two types of bills: a comprehensive formula, much like that nearly completed in an inconclusive House-Senate Conference last fall; or a "lean" bill, including a strong sanctions provision, a delayed and/or limited legalization program, and little else. At this point, Representative Romano Mazzoli (D-KY), Simpson's primary co-sponsor in past efforts and Chairman of the House Immigration Subcommittee, has not yet indicated his intentions regarding the introduction of a bill.

In addition to these developments, there are other signs that immigration proposals in various forms could be introduced in the current Congressional session. For example:

- INS Commissioner Alan Nelson announced in late January that the Reagan Administration was also considering a "streamlined approach" to immigration reform. In an attempt to avoid binding legislation with many controversial provisions, Nelson said, a program providing sanctions, legalization, and authorization of increased funding to support expanded INS responsibilities was seriously contemplated. Soon after Commissioner Nelson's announcement, INS released proposed administrative changes in current "H-2" temporary worker provisions of U.S. immigration law (see attached article).

- The Congressional Hispanic Caucus is said to be in the process of drafting an immigration reform bill. Although Representative Bill Richardson (D-NM), chairman of the caucus, has stated an intent to introduce legislation that would create a "Free Trade Zone" along the U.S.-Mexico boruer, there have been no other indications as to the provisions of an Hispanic Caucus immigration bill.

- Lawmakers at the state and local government levels have introduced several independent sanctions proposals. Both the Texas State legisla-

ture and the Colorado State Senate are currently considering their own sanctions bills, and the city council in Bosier City, Louisiana, is said to be close to adopting a sanctions proposal limited to certain local industries. In most cases, these state and local initiatives are much narrower in focus than proposed federal legislation.

Finally, La Raza is part of a coalition working on immigration reform legislation, as described below.

B. NCLR Activity

La Raza believes that sound, fair immigration reform is necessary to remedy current conditions which disadvantage hundreds of thousands of Hispanics nationwide. Recognizing that most of the past years' Congressional proposals in this respect have been unacceptable to the Council as an Hispanic organization, La Raza is now working within a coalition of Hispanic, civil liberties, and church organizations to forge effective, nondiscriminatory legislation. Alternative legislation, distinct from other proposals now before Congress, is expected to be completed soon.

While La Raza has closely monitored the efforts of Representative Roybal, and also those of the Congressional Hispanic Caucus, La Raza and the coalition have played no role in the formulation and drafting of these proposals. La Raza has taken no position on Representative Roybal's immigration reform bill; both the League of United Latin American Citizens (LULAC) and the Mexican American Legal Defense and Education Fund (MALDEF) oppose it.

La Raza is acting on several other aspects of current immigration issues. In response to concerns that past immigration reform proposals have relied too little on current, credible information, La Raza has undertaken various in-depth research projects. For example, the enclosed issue Brief, entitled "Undocumented Immigrants in the Labor Market: Recent Research Findings," addresses a key component of arguments for restrictive immigration bills -- that undocumented workers directly displace large numbers of native workers throughout the economy. Also, a soon to be released Council Backgrounder will provide detailed analysis of current operations of the INS, with specific attention to issues of service to the Hispanic community and the impact of INS enforcement activities on Hispanics.

In addition, La Raza has co-signed an amicus curiae brief, filed with the Supreme Court by the National Coalition for Haitian Refugees, concerning the upcoming review of a U.S. Court of Appeals decision on the constitutional rights of certain Haitian immigrants. The Court of Appeals for the Eleventh Circuit, in Jean v. Nelson, overturned a lower-court decision that Haitian refugees who were detained by the INS upon arrival to the Southeastern United States during the massive boatlift of 1980 were subject to unlawful "indivious discrimination" based on race and national origin. In reversing the decision, the higher court found that these Haitians were legally "excludable" from the U.S., and therefore were not entitled to basic protections of U.S. law. La Raza, in full agreement with the coalition brief's argument that excludable aliens are "persons" within the meaning of the fifth amendment of the Constitution and therefore have full rights to equal legal protection, believes that the dangerous precedent set in Jean v. Nelson should be overturned by the Supreme Court.

La Raza will continue to follow these and other issues as they develop. Several newspaper articles and other immigration-related items are attached to provide more background. Of particular interest to the Council is any additional information -- on local sanctions initiatives, displacement issues, and INS activities -- that La Raza Affiliates and Network members can provide. To report such information, and to obtain more details on the developments outlined above, please contact Charles Kamasaki or Dan Purtell at (202) 628-9600.

FACT SHEET ON CUBAN DEPORTATIONS

A diverse coalition of community-based and national Cuban organizations, legal associations, Hispanic groups, religious organizations, civil rights groups, voluntary agencies, and others are expressing their deep concern about the process the U.S. government is using to determine which Cubans who arrived in the 1980 Mariel Boatlift are to be deported. This fact sheet has been developed to inform interested parties about this issue and the nature of our concerns.

THE NATURE OF THE U.S.-CUBA AGREEMENT

- On December 14, 1984 the United States and Cuba announced an agreement on immigration matters which calls for the normalization of immigration procedures between the two countries.
- The U.S. will now be able to deport 2,746 Cubans whose names appear on an approved list at a rate of approximately 100 each month.
- The U.S. will resume issuing immigrant visas to Cuban nationals residing in Cuba, in particular to close family relatives of American citizens and permanent resident aliens, up to the number of 20,000 each year.
- The U.S. will admit up to 3,000 political prisoners, including immediate family members, during Fiscal Year 1985.

WHO AND WHERE ARE THE 2,746 CUBANS TO BE DEPORTED

- The approved list of 2,746 Cubans is secret and it is not publicly known how the list was compiled.
- The White House press release on the agreement states that "those persons to be returned to Cuba are ineligible to remain in the U.S. because they admitted to committing serious crimes in Cuba, have committed serious crimes in the United States, or suffer from servere mental disorders."
- Public statements by government officials involved with the deportations suggest that the 2,746 are presently in the Atlanta Penitentiary, other federal prisons, various state correctional facilities, St. Elizabeth's Hospital in Washington, D.C., and perhaps resettlement and treatment projects around the country.

HOW THE CUBANS WHO ARRIVED IN THE 1980 MARIEL BOATLIFT HAVE ENDED UP IN THESE LOCATIONS

Atlanta Penitentiary

- Since 1980 the United States Penitentiary in Atlanta has been used as the primary INS detention center for Mariel Cubans.

- Approximately 1,850 Cubans were detained by INS upon arrival because of crimes allegedly committed in Cuba. In 1981, under pressure from Federal District Judge Marvin Shoob, the Attorney General began a review process which has resulted in the release of all by approximately 300 of those initially held in Atlanta.

- Since 1981 a significant number of Cubans who were not originally detained by INS have since been sent to the Atlanta Penitentiary. Cubans have been detained in Atlanta for the following reasons:

  - individuals who after initial resettlement were picked up by INS for having no sponsor, no permanent address, and no consistent source of income.

  - Cubans who after initial resettlement were determined by INS to be potentially dangerous to the community. Citing its discretionary authority, INS revoked their "entrant" status and sent them to Atlanta.

  - individuals who were arrested after initial resettlement and detained by INS prior to any conviction.

  - individuals who were arrested and convicted of crimes after initial resettlement and were then detained by INS either prior to serving their sentence, after completing their sentence of even if there was no sentence to serve.

- It is believed that at least half of the Cubans on the deportation list are presently held in the Atlanta Penitentiary.

OTHER FEDERAL PRISONS

- The relatively few Cubans held in other federal prisons are thought to be those who have been convicted of federal crimes or who have been deemed troublemakers while in INS detention. At least one female Cuban is currently held in a federal prison in Lexington, Kentucky.

- It is believed that there are approximately 100 Cubans in other federal prisons and it is presumed that all are on the deportation list.

STATE CORRECTIONAL FACILITIES

- Individuals who have been convicted of crimes at any time since their initial resettlement and are serving their sentences.

- It is suspected that approximately 1,000 Cubans who are currently in state facilities are on the deportation list.

ST. ELIZABETH'S HOSPITAL

- Approximately 100 Cubans who have been diagnosed as mentally ill are being detained at St. Elizabeth's. It is thought that at least some have been awaiting placement into residential treatment projects sponsored by the U.S. Public Health Service (PHS).

- It is believed that the majority of the Cubans in St. Elizabeth's are on the deportation list.

PHS TREATMENT PROJECTS

- A limited number of PHS-sponsored treatment projects serve approximately 250 Cubans diagnosed as needing mental health treatment. The Cubans residing in these projects have been released primarily from Fort Chaffee, Atlanta, and St. Elizabeth's. It is thought that at least some of the Cubans in PHS projects are on the deportation list.

RESETTLEMENT PROJECTS

- A number of resettlement projects using halfway houses have been funded by the Community Relations Service (CRS) of the Department of Justice (DOJ). Over 2,000 Cubans have been resettled by such projects since 1981. Most of individuals served were released from Atlanta on the basis of case-by-case reviews conducted by INS and DOJ officials.

- It is suspected that some Cubans presently served by CRS resettlement projects, particularly those released within the last 9 months, are on the deportation list.

THE IMMIGRATION STATUS OF CUBANS PRESUMED TO BE ON THE DEPORTATION LIST

THE ATLANTA PENITENTIARY

- Virtually all Cubans who have in the past been detained in Atlanta or who are detained there currently have had exclusion proceedings and have been ordered excluded. Some have been found excludable for having committed crimes in Cuba or in the U.S. Others who have been

detained because of suspected criminal activity or for having no sponsor are believed to have been found excludable because of entry into the U.S. without valid entry documents.

- Many of the Cubans in Atlanta have appealed the order of exclusion and applied for political asylum claiming a fear of persecution if returned to Cuba. Virtually all such asylum applications have been denied.

STATE CORRECTIONAL FACILITIES

- Most are believed to have the original Cuban Entrant status granted to them when they were initially resettled. A small number may have been initially released from Atlanta and would already have an outstanding order of exclusion.

- INS has stated that Cubans on the deportation list who have not yet been found excludable will have exclusion hearings.

ST. ELIZABETH'S HOSPITAL

- It is believed that many but not all of the Cubans in St. Elizabeth's have been ordered excluded because of entry into the U.S. without valid entry documents.

TREATMENT AND RESETTLEMENT PROJECTS

- Since most of the Cubans in these projects have been released from either Atlanta or St. Elizabeth's, it is believed that most of these individuals have outstanding orders of exclusion.

THE STATUS OF THE LITIGATION IN ATLANTA CONCERNING THESE INDIVIDUALS

- A complex and multi-faceted class action lawsuit on behalf of the Cubans who have been, are now, or will be in the Atlanta Penitentiary has been in proceedings since 1981.

- On October 15, 1984 Judge Marvin Shoob ordered a halt to any deportations until INS has fully and fairly addressed the issue of whether the Cubans as a class have a well-founded fear of persecution because of their membership in the social group of Mariel Cubans. As evidence for this claim lawyers for the Cubans presented affadavits from Mariel Cubans who voluntarily returned to Cuba in 1980 and were reportedly jailed, tortured, and tried as "Mariel scum" before being set adrift in the sea with their hands and legs shackled. They were then warned that if they tried to

return to Cuba again they would be shot. The lawyers also presented State Department documents citing Cuba's violations of human rights.

- The government appealed Judge Shoob's stay on deportations arguing that the Cuban government might break the U.S.-Cuba Agreement if the U.S. delayed deportations and that Fidel Castro had promised in a public speech that no returning Mariel Cuban would be persecuted. On January 15, 1985, the 11th Circuit of Appeals vacated Judge Shoob's stay on deportation and effectively decertified the class although the decision allows for individuals to start proceedings for administrative or judicial relief. This decision has been generally interpreted as removing the major legal obstacles to the deportation and it is expected that deportations may begin by the end of February.

THE NATURE OF THE CONCERNS BEING RAISED BY THE COALITION OF GROUPS

- Our fundamental concern is that Cubans inappropriate for deportation may fall victim to a mass processing which appears to have been arbitrary and flawed. We do not oppose the U.S.-Cuba Agreement, do not oppose all deportations, and certainly do not wish to delay the admission of Cuban political prisoners and beneficiaries of immigrant visa petitions. We strongly believe, however, that our nation's commitment to the rule of law and basic fairness will be undermined unless the U.S. government uses processes to determine which Cubans are deported that are just, open, and above reproach both legally and ethically.

ARBITRARY PROCESSING AND ITS POTENTIAL CONSEQUENCES

- Some individuals may be subject to deportation based on incomplete or unreliable declarations of crimes committed in Cuba.

- It appears that many of the Cubans who have applied for asylum had their applications filled out by INS officials and were never given adequate explanations of their rights.

- Some Cubans may face deportation because of alleged problems that occurred after resettlement in the U.S. but have never been convicted of crimes here.

- Some Cubans are excludable because of entering the U.S. without visas. Virtually none of the 125,000 Cubans who arrived in 1980 had valid entry documents.

- Some Cubans who have committed minor offenses in the U.S. may be in detention awaiting deportation.

- Some individuals who may be on the list have been successfully resettled and are leading productive lives.

- Many Cubans presumably facing deportation have American citizen spouses, children, and other relatives in the U.S.

- At least 147 Cubans in the Atlanta Penitentiary have been judged by INS to be non-violent and likely to refrain from criminal activity but have been held in detention awaiting deportation.

- A real danger exists that Cubans may be deported before receiving a full and fair hearing on the issue of whether they have a well-founded fear of persecution upon return to Cuba.

- Individuals who may have been mistakenly classified as severely mentally ill may now be subject to deportation. Some Cubans have been evaluated by different evaluators under varying circumstances resulting in contradictory diagnoses. For example, in 1981 a psychiatrist from the National Institute of Mental Health reviewed mental health evaluations conducted on Cubans in Fort Chaffee and found 78% of them to be inaccurate.

WHAT WE STAND FOR

- That no individual be deported before being granted the procedural and substantive due process to which they are entitled. This includes guarantees that due care be given the development of factual records, that individuals be informed of and understand their rights to representation to apply for political asylum and to re-open these proceedings, and that each individual receives a detailed explanation of the procedures used to determine their status.

- That the government publicly define "serious crimes" so that those individuals who clearly threaten public safety can be considered distinct from others who are likely to be inappropriate for deportation.

- That a careful review of cases against defined criteria be undertaken so that mistakes are not made in deciding who is to be deported.

- That the mentally ill receive consideration in excess of legal formalities. The expulsion from Cuba of this helpless and vulnerable group in 1980 provoked moral outrage worldwide. The U.S. gains nothing by repeating this shameful act.

- In stating these basic principles we are simply requesting that the U.S. government arrive at the crucial decisions regarding deportations in a way that is both fair and humane.